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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN LEARMONT,

Defendant and Appellant.

E050450

(Super.Ct.No. FVI023287)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata,
Judge. Affirmed.

Lynelle K. Hee, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

On June 6, 2008, a first amended information charged defendant and appellant Justin Learmont with premeditated, attempted murder on Patrick Gardner under Penal Code¹ sections 664, and 187, subdivision (a) (count 1); assault with a firearm on Clifton Fenoff under section 245, subdivision (a)(2) (count 2); and assault with a deadly weapon on Patrick Gardner under section 245, subdivision (a)(1) (count 3). The information also alleged that, in the commission of counts 1 and 2, defendant personally used a firearm within the meaning of sections 12022.53, subdivisions (b), (c) and (d) (count 1), and 12022.5, subdivision (a) (counts 1 & 2).

On August 22, 2008, the trial court granted defendant's motion under section 995 to dismiss count 3. On December 8, 2009, defendant pleaded guilty to attempted murder without the premeditation finding under sections 664 and 187, subdivision (a) (count 1), and assault with a firearm under section 245, subdivision (a)(2) (count 2). Defendant also admitted that he personally discharged a firearm causing great bodily injury in the commission of count 1 under section 12022.53, subdivision (d). As part of the plea agreement, defendant entered in a waiver under *People v. Vargas* (1990) 223 Cal.App.3d 1107 (*Vargas* waiver).

¹ All statutory references are to the Penal Code unless otherwise specified.

Following the plea, the trial court sentenced defendant to a total term of 35 years to life composed of nine years for count 1, 25 years to life for the firearm enhancement, plus a consecutive one-year term for count 2 (one-third the middle term).

Defendant was released on his own recognizance, and execution of the sentence was suspended on the condition defendant comply with the *Vargas* conditions which included, among other things, that defendant abstain from alcohol and appear for the resentencing hearing on January 12, 2010. The plea provided for a reduced sentence of 20 years if defendant complied with the *Vargas* conditions.

On January 7, 2010, the trial court revoked defendant's own recognizance status and issued a warrant for his arrest based on information that defendant had violated the terms of his *Vargas* waiver. Defendant failed to appear for sentencing on January 12, 2010. Defendant was arrested and appeared in custody on February 3, 2010. On March 9, 2010, the trial court found that defendant violated the terms of his *Vargas* waiver and imposed the previously-executed sentence of 35 years to life.

On March 19, 2010, defense counsel filed a notice of appeal on behalf of defendant. On March 24, the notice was amended to indicate the appeal followed a guilty plea and was based on the sentence or other matters not affecting the validity of the plea.

II

STATEMENT OF FACTS²

On December 31, 2005, about 7:00 p.m., Patrick Gardner was playing cards with friends at a bar, Behind the Shoots, in Lucerne Valley. Later, defendant arrived at the bar and joined the card game. Thereafter, defendant and Gardner began to argue; Gardner tried to punch defendant. Gardner then grabbed defendant, laid on top of him, and pressed his forearm on defendant's throat while yelling racial slurs. The fight ended shortly thereafter. Defendant and Gardner went outside to talk things out; they apologized to one another and hugged. Gardner returned to the bar alone and began a new card game with Cliff Fenoff.

About 45 minutes later, defendant returned to the bar. Gardner overheard defendant talking on the phone; defendant stated he wanted Gardner dead. Gardner stood about three feet from defendant and asked defendant what he was talking about. They began to argue again. At some point, defendant turned as though he was walking away, then turned back around and fired two shots at Gardner. The first shot struck Gardner in the chest and the other shot grazed Fenoff. Defendant left the bar immediately after the shooting. Gardner was airlifted to Arrowhead Regional Medical Center where he underwent three surgeries. Both defendant and Gardner were drunk during the initial confrontation and shooting.

² The statement of facts is derived from the preliminary hearing testimony as defendant pled guilty.

The following morning, Benny Parish received a phone call from defendant, asking for a ride. Parish told defendant that the police were looking for him and advised defendant to turn himself in. Defendant stated that he “was going to ride it out.”

III

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his one-page, handwritten letter brief, defendant contends that he violated the terms of his *Vargas* waiver because he was not provided with the appropriate medications for his Bipolar and depression diagnosis when he was released from the detention center. He claims that, without his medication, he “only did what the voices in my head told me to do.” Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error. The record reveals that defendant had difficulty in dealing with a death in his family. Although we acknowledge that a death in the family can be emotionally draining, the fact remains that defendant voluntarily violated the terms of his *Vargas* waiver by consuming alcoholic beverages; defendant admitted that he had “no excuse[] for picking up that glass of beer.”

Moreover, defendant admitted that he “freaked out an[d] got scared” when he read in the newspaper that he would be sentenced to 35 years to life; therefore, he chose not to attend his resentencing hearing. Although defendant mentioned that he did not receive the appropriate medications to treat his mental illness, defendant never claimed that he violated the terms of his *Vargas* waiver due to “voices in [his] head” until he filed his letter brief in this appeal.

We have now concluded our independent review of the record and found no arguable issues.

IV

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ King
J.